

Assembly Bill No. 2457

Passed the Assembly May 4, 2006

Chief Clerk of the Assembly

Passed the Senate June 26, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 7017.3, 7068.1, 7072.5, and 7152 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

AB 2457, Nakanishi. Contractors.

The Contractors' State License Board licenses and regulates contractors. Under existing law, the board is required to report certain statistical information to the Legislature annually, including violations of specified provisions relating to home improvement contracts.

The bill would change the information on which the board is required to report.

Existing law requires certain persons to register as a home improvement salesperson, as defined, and makes it a crime for a person to engage in the occupation without being registered. Existing law exempts from the registration requirement, among others, a corporate officer of a licensee and a qualifying person, as defined.

This bill would also exempt from registration a general partner of a licensee and would make the exemption, as it applies to such a general partner or a corporate officer or qualifying person, applicable only in specified circumstances. By changing the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would make other nonsubstantive changes.

The people of the State of California do enact as follows:

SECTION 1. Section 7017.3 of the Business and Professions Code is amended to read:

7017.3. The Contractors' State License Board shall report annually to the Legislature, not later than October 1 of each year, the following statistical information for the prior fiscal year. The following data shall be reported on complaints filed with the board against licensed contractors, registered home improvement salespersons, and unlicensed persons acting as licensees or registrants:

(a) The number of complaints received by the board categorized by source, such as public, trade, profession, government agency, or board-initiated, and by type of complaint, such as licensee or nonlicensee.

(b) The number of complaints closed prior to referral for field investigation, categorized by the reason for the closure, such as settled, referred for mandatory arbitration, or referred for voluntary arbitration.

(c) The number of complaints referred for field investigation categorized by the type of complaint such as licensee or nonlicensee.

(d) The number of complaints closed after referral for field investigation categorized by the reason for the closure such as settled, referred for mandatory arbitration, or referred for voluntary arbitration.

(e) For the board's Intake/Mediation Center and the board's Investigation Center closures, respectively, the total number of complaints closed prior to a field investigation per consumer services representative, and the total number of complaints closed after referral for a field investigation per enforcement representative. Additionally, the board shall report the total number of complaints closed by other board staff during the year.

(f) The number of complaints pending at the end of the fiscal year grouped in 90-day increments, and the percentage of total complaints pending, represented by the number of complaints in each grouping.

(g) The number of citations issued to licensees categorized by the type of citation such as order of correction only or order of correction and fine and the number of citations issued to licensees that were vacated or withdrawn.

(h) The number of citations issued to nonlicensees and the number of these citations that were vacated or withdrawn.

(i) The number of complaints referred to a local prosecutor for criminal investigation or prosecution, the number of complaints referred to the Attorney General for the filing of an accusation, and the number of complaints referred to both a local prosecutor and the Attorney General, categorized by type of complaint, such as licensee and nonlicensee.

(j) Actions taken by the board, including, but not limited to, the following:

(1) The number of disciplinary actions categorized by type, such as revocations or suspensions, categorized by whether the disciplinary action resulted from an accusation, failure to comply with a citation, or failure to comply with an arbitration award.

(2) The number of accusations dismissed or withdrawn.

(k) For subdivisions (g) and (j), the number of cases containing violations of Section 7121, 7121.5, and paragraph (5) of subdivision (a) of Section 7159.5 categorized by section.

(l) The number of interim suspension orders sought, the number of interim suspension orders granted, the number of temporary restraining orders sought, and the number of temporary restraining orders granted.

(m) The amount of cost recovery ordered and the amount collected.

(n) Case aging data, including data for each major stage of the enforcement process, including the following:

(1) The average number of days from the filing of a complaint to its closure by the board's Intake/Mediation Center prior to the referral for an investigation categorized by the type of complaint, such as licensee or nonlicensee.

(2) The average number of days from the referral of a complaint for an investigation to its closure by the Investigation Center categorized by the type of complaint, such as licensee or nonlicensee.

(3) The average number of days from the filing of a complaint to the referral of the completed investigation to the Attorney General.

(4) The average number of days from the referral of a completed investigation to the Attorney General to the filing of an accusation by the Attorney General.

(5) The average number of days from the filing of an accusation to the first hearing date or date of a stipulated settlement.

(6) The average number of days from the receipt of the Administrative Law Judge's proposed decision to the registrar's final decision.

SEC. 2. Section 7068.1 of the Business and Professions Code is amended to read:

7068.1. The person qualifying on behalf of an individual or firm under paragraph (1), (2), or (3) of subdivision (b) of Section 7068 shall be responsible for exercising that direct supervision and control of his or her employer's or principal's construction operations as is necessary to secure full compliance with the provisions of this chapter and the rules and regulations of the board relating to the construction operations. This person shall not act in the capacity of the qualifying person for an additional individual or firm unless one of the following conditions exists:

(a) There is a common ownership of at least 20 percent of the equity of each individual or firm for which the person acts in a qualifying capacity.

(b) The additional firm is a subsidiary of or a joint venture with the first. "Subsidiary," as used in this subdivision, means any firm at least 20 percent of the equity of which is owned by the other firm.

(c) With respect to a firm under paragraph (2) or (3) of subdivision (b) of Section 7068, the majority of the partners or officers are the same.

(d) Notwithstanding subdivisions (a), (b), and (c), a qualifying individual may act as the qualifier for no more than three firms in any one-year period.

"Firm," as used in this section, means a copartnership, a limited partnership, a corporation, or any other combination or organization described in Section 7068.

"Person," as used in this section, is limited to persons natural, notwithstanding the definition of "person" in Section 7025.

The board shall require every applicant or licensee qualifying by the appearance of a qualifying individual to submit detailed information on the qualifying individual's duties and responsibilities for supervision and control of the applicant's construction operations.

SEC. 3. Section 7072.5 of the Business and Professions Code is amended to read:

7072.5. (a) Upon the issuance of a license, a plasticized pocket card of a size, design, and content as may be determined by the registrar shall be issued at no cost to each licensee, or to the partners or officers or responsible managing officer of licensees licensed as other than individuals, which card shall be evidence that the licensee is duly licensed pursuant to this chapter. All cards issued shall be surrendered upon the suspension, revocation, or denial of renewal of the license, and shall be mailed or delivered to the board within five days of the suspension, revocation, or denial.

(b) When any person to whom a card is issued terminates his or her position, office, or association with a licensee that is licensed as other than an individual, that person shall surrender his or her card to the licensee and within five days thereafter the card shall be mailed or delivered by the licensee to the board for cancellation.

SEC. 4. Section 7152 of the Business and Professions Code is amended to read:

7152. (a) “Home improvement salesperson” is a person employed by a home improvement contractor licensed under this chapter to solicit, sell, negotiate, or execute contracts for home improvements, for the sale, installation or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs.

(b) The following shall not be required to be registered as home improvement salespersons:

(1) An officer of record of a corporation licensed pursuant to this chapter.

(2) A general partner listed on the license record of a partnership licensed pursuant to this chapter.

(3) A qualifying person, as defined in Section 7068.

(4) A salesperson whose sales are all made pursuant to negotiations between the parties if the negotiations are initiated by the prospective buyer at or with a general merchandise retail establishment that operates from a fixed location where goods or services are offered for sale.

(5) A person who contacts the prospective buyer for the exclusive purpose of scheduling appointments for a registered home improvement salesperson.

(6) A bona fide service repairperson who is in the employ of a licensed contractor and whose repair or service call is limited to the service, repair, or emergency repair initially requested by the buyer of the service.

(c) The exemption to registration provided under paragraphs (1), (2), and (3) of subdivision (b) shall apply only to those individuals who, at the time of the sales transaction, are listed as personnel of record for the licensee responsible for soliciting, negotiating, or contracting for a service or improvement that is subject to regulation under this article.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2006

Governor